

PART 1956 - DEBT SETTLEMENT

Subpart B - Debt Settlement - Farm Loan Programs and Multi-Family Housing

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Exhibit A - Settlement of Farm Loan Programs Debts
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 Received Previous Debt Forgiveness

PART 1956 - DEBT SETTLEMENT

Subpart B - Debt Settlement - Farm Loan Programs and Multi-Family Housing

§1956.51 Purpose.

This subpart delegates authority and prescribes policies and procedures for settlement of debts owed to the United States under the Farm credit loan programs of the Farm Service Agency (FSA) and the Multi-Family Housing (MFH) program of the Rural Housing Service (RHS). It also applies to Nonprogram (NP) loans secured by MFH property of the RHS. Settlement of claims against recipients of grant funds for reasons such as the use of funds for improper purposes is also covered under this subpart. Settlement of claims against third party converters, and Economic Opportunity (EO) loans is authorized under the Federal Claims Collection Standards, 4 CFR Parts 101-105. This subpart does not apply to RHS direct Single Family Housing (SFH) loans or RHS NP loans secured by SFH property. (Revised 12-23-96, SPECIAL PN.)

§§1956.52 - 1956.53 [Reserved]

§1956.54 Definitions.

Adjustment. The reduction of a debt or claim conditioned upon completion of payment of the adjusted amount at a specific future time or times, with or without the payment of any consideration when the adjustment offer is approved. An adjustment is not a final settlement until all payments under the adjustment agreement(s) have been made.

Amount of debt. The outstanding balance of the amount loaned including principal and interest plus any outstanding advances, including interest, and subsidy to be recaptured made by the Government on behalf of the borrower.

Cancellation. The final discharge of a debt without any payment on it.

Chargeoff. The writing off of a debt and termination of collection activity without release of personal liability.

Compromise. The satisfaction of a debt or claim by the acceptance of a lump-sum payment of less than the total amount owed on the debt or claim.

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Debt forgiveness. For the purposes of servicing Farm Loan Programs loans, debt forgiveness is defined as a reduction or termination of a direct FLP loan in a manner that results in a loss to the Government. Included, but not limited to, are losses from a writedown or writeoff under FmHA Instruction 1951-S, debt settlement, after discharge under the provisions of the bankruptcy code, and associated with release of liability. Debt cancellation through conservation easements or contracts is not considered debt forgiveness for loan servicing purposes. (Added 03-14-97, SPECIAL PN.)

Debtor. The borrower of funds under any of the Agency programs. This includes co-signors, guarantors and persons or entities that initially obtained or assumed a loan. Debtor also includes grant recipients.

Farm Loan programs (FLP) loans. Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Special Livestock (SL), Softwood Timber (ST) loans, and/or Rural Housing Loans for farm services buildings (RHF).

Housing programs. All programs and claims arising under programs administered by RHS under Title V of the Housing Act of 1949.

Servicing office. The office that is responsible for the account.

Settlement. The compromise, adjustment, cancellation, or chargeoff of a debt owed to the respective Agency. The term "settlement" is used for convenience in referring to compromise, adjustment, cancellation, or chargeoff actions, individually or collectively.

United States Attorney. An attorney for the United States Department of Justice.

§§1956.55 - 1956.56 [Reserved]

§1956.57 General provisions.

(a) Application of policies. All debtors are entitled to impartial treatment and uniform consideration under this subpart. Accordingly, Agency personnel charged with any responsibility in connection with debt settlement will adhere strictly to the authorizations, requirements, and limitations in this subpart, and will not substitute individual feelings or sympathies in connection with any settlement.

§ 1956.57 (Con.)

(b) Information needed for debt settlement. A debtor requesting debt settlement must submit complete and accurate information from which a full determination of his or her financial condition can be made. This should include where applicable, but is not limited to, obtaining Form RD 1910-5, "Request for Verification of Employment," debtors providing expense verification, verifying farm program benefits (Farm Service Agency or Commodity Credit Corporation payments), and examining county records to determine what other assets the debtor has or recently disposed of. When an FSA debtor is continuing to farm, Form FSA 431-2, "Farm and Home Plan," must be obtained. Credit reports will be obtained on all FLP debt settlements, except cases legally without merit. For housing debt settlements, credit reports will only be obtained if the debtor has not provided complete financial information. Credit reports should be obtained

§ 1956.57(b) (Con.)

on entities and the individuals of the entity. The credit report will be obtained without a charge to the borrowers. Also, where a spouse is not a codebtor, the spouse's income will be considered in meeting family living expenses. If it appears that a debtor will not be able to pay in full and the indebtedness is eligible for settlement under this subpart, action should be taken, if possible, to avoid unnecessary litigation to enforce collection. If the debt is eligible for settlement, the debt settlement authorities should be explained and the privileges thereof extended to the debtor. The information obtained from the debtor should be documented on Form RD 1956-1, "Application for Settlement of Indebtedness." (Revised 04-28-99, PN 304.)

(c) Negotiating a settlement. County Supervisors may approve or reject compromises, adjustments, cancellations, or chargeoffs of SFH debts (to include recapture receivables), regardless of the amount. District Directors and County Supervisors cannot approve other debt settlement actions; therefore, other than SFH debt settlements, they will make no statements to a debtor concerning the action that may be taken upon a debtor's application. In negotiating a settlement, all of the factors which are pertinent to determining ability to pay will be discussed to assist the debtor in arriving at the proper type and terms of a settlement. The present and future repayment ability of a debtor, the factors mentioned in this subpart, and any other pertinent information will be the basis of determining whether the debt should be collected in full, compromised, adjusted, canceled, or charged off. It is impossible in cases eligible for debt settlement to forecast accurately the debtor's future repayment ability over a long period of time; consequently, the period of time during which payments on settlement offers are to be made should not exceed 5 years. Debtors have the right to make voluntary settlement offers in any amount should they elect to do so. Adjustment offers will not be approved in any case unless there is reasonable assurance that the debtor will be able to make the payments as they become due.

(d) Disposition of property. Security may be retained by the debtor only under the conditions specified in § 1956.66 of this subpart.

(e) Proceeds from the disposal of security prior to approval of a debt settlement offer. A debtor is not required to have disposed of the security prior to application for debt settlement for a loan to be settled. However, if a debtor has disposed of security prior to applying for debt settlement, proceeds from the disposed security must first be applied on the debtor's account, irrespective of an application for debt settlement unless the conditions specified in § 1956.66 of this subpart are met.

(f) County Committee review. The County Committee will not review proposed settlement action for Housing Program loans. Except for the cancellation of those debts discharged in bankruptcy where there is no remaining security, proposed settlement actions for Farmer Program loans will be reviewed for approval or rejection by the County Committee, and no settlement shall be approved if it is more favorable to the debtor than recommended by the appropriate County Committee.

(g) Settlement when legal or investigative action has been taken, recommended, or is contemplated.

(1) Debts cannot be settled:

(i) If the matter has been referred either to the Office of the Inspector General (OIG) under § 1962.49(a) of Subpart A of part 1962, or to the Office of the General Counsel (OGC) because of suspected criminal violation, or criminal prosecution is pending because of an illegal act committed by the debtor in connection with the debt or the security for that debt, the procedure outlined in paragraph (g)(3) of this section will be followed, unless, the OIG has declined to investigate the matter or OGC has advised otherwise, or the case is in the hands of the United States Attorney.

(ii) If a request for referral to the United States Attorney to institute a civil action to protect the interest of the Government has been made by the Agency.

(iii) Except as provided in paragraph (g)(3) of this section, if the case has been referred to the United States Attorney and is not closed.

(2) If a debtor's account is involved in a fiscal irregularity investigation in which final action has not been taken or the account shows evidence that a shortage may exist and an investigation will be requested, the account will not be approved for settlement.

(3) When a claim has been referred to, or a judgment has been obtained by the United States Attorney, and the debtor requests settlement, the employee in charge of the account will explain to the debtor that the United States Attorney has exclusive jurisdiction over the claim or judgment, that the Agency has no

§1956.57(g) (Con.)

authority to agree to a settlement offer when the United States Attorney's file is not closed, and that if the debtor wishes to make a compromise or adjustment offer when the United States Attorney's file is not closed, it will be submitted with any related payment directly to the United States Attorney for a decision on the settlement offer.

(h) Advice from OGC. State Directors will obtain, when necessary, advice from the OGC in handling proposed debt settlement actions which involve legal problems.

(i) Settlement of claims against estates. Settlement of a claim against an estate under the provisions of this subpart will be based on the recovery that may reasonably be expected, taking into consideration such items as the security, costs of administration, allowances of minor children and surviving spouse, allowable funeral expenses, and dower and courtesy rights, and specific encumbrances on the property having priority over claims of the Government.

(j) Joint debtors. Settlements may not be approved for one joint debtor unless approved for all debtors. "Joint debtors" includes all parties (individuals, partnerships, joint operators, cooperatives, corporations, estates) who are legally liable for payment of the debt.

(1) Separate and individual adjustment offers from joint debtors must be accepted and processed only as a joint offer. Joint debtors must be advised that all debtors will remain liable for the balance of the debt until all payments due under the joint offer have been made.

(2) A separate Form RD 1956-1 will be completed by each debtor, unless the debtors are members of the same family and all necessary financial information on each debtor can be shown clearly on a single application. Separate applications will be sent to the State Office as a unit.

(3) If one debtor applies for compromise, adjustment, or cancellation, or if the debt is to be charged off, and the other debtor(s) is deceased or has received a discharge of the debt in bankruptcy, or the whereabouts of the other debtor(s) is unknown, or it is impossible or impracticable to obtain the signature of the other debtor(s), Form RD 1956-1 or Form RD 1956-2 (for housing loans) "Cancellation or Charge-off of FmHA Indebtedness," will be prepared by showing at the top of the form the name of the debtor requesting settlement, followed by the name of the other debtor.

For example, "John Doe, joint debtor with Bill Doe, deceased," "John Doe, joint debtor with Sam Doe, discharged in bankruptcy," "John Doe, joint debtor with Mary Doe, impossible or impracticable to obtain signature," as appropriate. In addition to the information concerning settlement of the debt by the applicant, information which justifies settlement of the debt as to the debtor(s) not joining in the application will be shown on Form RD 1956-1, or RD 1956-2 for housing loans.

(k) Settlement where debtor owes more than one type of Agency loan. It is not the policy to settle any loan indebtedness of a debtor who is also indebted on another Agency loan and who will continue as an active borrower. In such cases, the facts will be fully documented in Part VIII of Form RD 1956-1. (Revised 03-14-97, SPECIAL PN.)

(l) No previous debt forgiveness. Debt settlement may not be approved for any direct Farm Loan Programs loan if the borrower has received debt forgiveness on any other direct loan as defined in §1956.54 of this Instruction. (Added 03-14-97, SPECIAL PN.)

§§1956.58 - 1956.65 [Reserved]

§1956.66 Compromise and adjustment of nonjudgment debts.

Nonjudgment debts which the debtor is unable to pay may be compromised or adjusted in accordance with applicable provisions of this section, and the debtor may retain the security property, if any. Application will be made on Form RD 1956-1 by the debtor; or if the debtor is unable to act, by another party having legal authority to act for the debtor. Collection of a lump sum offer may be deferred until the debtor is advised that the offer is approved. Upon full payment of the approved compromise or adjustment amount, the Agency will release the debtor from liability by delivering the note(s) to the debtor stamped "Satisfied by compromise or adjustment."

(a) FLP debts. The debt or any extension thereof on which compromise or adjustment is requested does not have to be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application. Nonjudgment secured FLP debts may be compromised or adjusted in accordance with the following conditions:

(1) Security may be retained by the debtor if the debtor offers an amount at least equal to the current fair market value (including any crop security) less any prior lien amounts. Any remaining unsecured debt may be debt settled.

(2) Where the debtor is able to pay an amount in excess of the lump sum compromise offer, an adjustment offer must call for a lump sum payment as set out in paragraph (a)(1) of this section, plus any additional amounts the Agency determines the debtor is able to pay over a period of time not to exceed 5 years.

(3) The acceptability of a compromise or adjustment offer will be arrived at by determining and evaluating:

(i) Statement of indebtedness owed on any prior liens. Statements will be retained in the debtor's file.

(ii) Value of existing security as determined by a current appraisal made or obtained by the Agency. The appraisal will be retained in the debtor's file.

(iii) Debtor's total present income and probable sources, amount and stability of income over the next 5 years. Old age pensions, other public assistance, and veteran's disability pensions will not be considered as sources of funds for making compromise and adjustment offers.

(iv) Amount of debtor's other debts.

(v) Amount of debtor's essential family living expenses, and farm or business operation expenses necessary to continue the operation, if applicable.

(vi) Age and health when the debtor is largely depending on income from an occupation where manual labor is required.

(vii) Size of debtor's family, their ages and health.

(viii) Value of debtor's assets in relation to debts and liens of third parties. Reasonable equity in a modest nonsecurity homestead occupied by the debtor will not be considered as available for settlement. Nonsecurity property in excess of minimum family living needs which is not exempt from levy and execution should be considered in determining the debtor's ability to pay.

(b) Housing debts (both Single-Family and Multi-Family).

Nonjudgment secured debts may be compromised or adjusted as follows:

(1) The debt is fully matured under the terms of the note or other instrument; or has been accelerated by written notice prior to the date of the settlement application.

(2) A compromise offer must at least equal the value of the security as determined by FmHA (less any prior liens) plus any additional amount FmHA determines the debtor is able to pay based on a current financial statement.

(3) An adjustment offer must meet the requirements of paragraph (b)(2) of this section, except the debt (or the amount offered) is to be scheduled for payment over the shortest period FmHA determines is feasible based on the debtor's financial resources, but not to exceed 5 years.

(c) Unsecured debts. Unsecured debts considered under this paragraph are most frequently account balances remaining after the debtor has sold security property to another party/entity, the security has been liquidated through foreclosure, or FmHA has accepted a deed in lieu of foreclosure, and the borrower was not released from liability. An offer to compromise or adjust an unsecured debt must represent the maximum amount FmHA determines the debtor can pay based on a current financial statement and other information available to FmHA. An adjustment offer is to be scheduled for payment over the shortest period FmHA determines is feasible, but not to exceed 5 years.

§1956.67 Debts which the debtor is able to pay in full but refuses to do so.

Debts which the debtor may have the ability to pay in full but has refused to do so may be compromised or adjusted in the following situations on Form RD 1956-1:

(a) When the full amount cannot be collected because of the refusal of the debtor to pay the debt in full and the OGC advises that the Government is unable to enforce collection in full within a reasonable time by enforced collection proceedings, the debt may be compromised. In determining inability to collect, the following factors will be considered:

(1) Availability of assets or income which may be realized by enforced collection proceedings, considering the applicable exemptions available to the debtor under State and Federal law.

(2) Inheritance prospects within 5 years.

(3) Likelihood of debtor obtaining nonexempt property or income within 5 years, out of which there could be collected a substantially larger sum than the amount of the present offer.

(4) Uncertainty as to price the security or other property will bring at forced sale.

(b) The debt may be compromised or adjusted when the OGC has advised in writing that:

(1) There is a real doubt concerning the Government's ability to prove its case in court for the full amount of the debt, and

(2) The amount offered represents a reasonable settlement considering:

(i) The probability of prevailing on the legal issues involved.

(ii) The probability of proving facts to establish full or partial recovery, with due regard to the availability of witnesses and other pertinent factors.

(iii) The probable amount of court costs and attorney's fees which may be assessed against the Government if it is unsuccessful in litigation.

(c) When the cost of collecting the debt does not justify enforced collection of the full amount, the amount accepted in compromise or adjustment may reflect an appropriate discount for administrative and litigation costs of collection. Such discount will not exceed \$2,000 unless the OGC advises that in the particular case a larger discount is appropriate. The cost of collecting may be a substantial factor in settling small debts but normally will not carry great weight in settling large debts.

§1956.68 Compromise or adjustment without debtor's signature.

Debts of a living debtor may be compromised or adjusted if it is impossible or impracticable to obtain a signed application and all other requirements of this section applicable to compromise or adjustment with a signed application have been met. Form RD 1956-1 will show:

(a) The sources from which the information was obtained.

(b) That a current effort was made to obtain the debtor's signature and the date(s) of such effort.

(c) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

§1956.69 [Reserved]

§1956.70 Cancellation.

Nonjudgment debts may be canceled in the following instances:

(a) With application. The debt or any extension thereof on Farmer Programs debts do not have to be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application. Debts due the FmHA may be canceled upon application of the debtor, or if a debtor is unable to act, upon application of a guardian, executor, or administrator, subject to the following conditions:

- (1) The FmHA employee in charge of the account furnishes a report and favorable recommendation concerning the cancellation.
- (2) There is no known security for the debt and the debtor has no other assets from which the debt could be collected.
- (3) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so.

(b) Without application. Debts due the FmHA may be canceled upon a report and the favorable recommendation of the employee in charge of the account in the following instances:

- (1) Deceased debtors. The following conditions must exist:

- (i) There is no known security; and
- (ii) An administrator or executor has not been appointed to settle the debtor's estate and the financial condition of the estate has been investigated and it has been established that there is no reasonable prospect of recovery; or
- (iii) An administrator or executor has been appointed to settle the estate of the debtor; and

(A) A final settlement has been made and confirmed by the probate court and the Government's claim was recognized properly and the Government has received all funds it was entitled to, or

(B) A final settlement has not been made and confirmed by the probate court but there are no assets in the estate from which there is any reasonable prospect of recovery, or

(C) Regardless of whether a final settlement has been made, there were assets in the estate from which recovery might have been affected but such assets have been disposed of or lost in a manner which OGC advises will preclude any reasonable prospect of recovery by the Government.

(2) Disappeared debtors. The debt may be canceled without application where the debtor has no known assets or future debt-paying ability, has disappeared and cannot be found without undue expense, and there is no existing security for the debt. Reasonable efforts will be made to locate the debtor. These efforts will generally include contacts, either in person or in writing, with postmasters, motor vehicle licensing and title authorities, telephone directories, city directories, utility companies, State and local governmental agencies, other Federal agencies, employees, friends, and credit agency skip locate reports, known relatives, neighbors and County Committee members. Also, the debtor's loan file should be reviewed carefully for possible leads that may be of assistance in locating the debtor. The efforts made to locate the debtor, including the names and dates of contacts, and the information furnished by each person, will be fully documented in the appropriate space on Form RD 1956-1 or Form RD 1956-2 for housing loans.

(3) Debtors discharged in bankruptcy. If there is no security for the debt, debts discharged in bankruptcy shall be canceled by the use of Form RD 1956-1 or Form RD 1956-2, for housing loans, with attachments as below. No attempt will be made to obtain the debtor's signature and County Committee review is unnecessary. If the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of the debt in accordance with advice from OGC, the debt is not discharged.

(i) Chapter 7 Bankruptcy cases will be documented with a copy of the "Discharge of Debtor" order(s) by the court for all obligors.

(ii) For debts identified as being part of an unsecured claim under Chapter 11, the cancellation will be documented with a copy of the organization plan, copy of the order by the court confirming the plan, a copy of the order completing the plan (a similar order), and an opinion by OGC that the confirming order has discharged the obligor(s) of liability to that part of the debt.

(iii) For debts identified as being part of an unsecured claim under Chapters 12 or 13, the cancellation will be documented with a copy of the reorganization plan and confirmation order, as above, a copy of the order completing the plan and closing the case, and an opinion by OGC that the completion order has discharged the obligor(s) of liability to that portion of the debt.

(c) Signature of debtor cannot be obtained. Debts of a living debtor may be canceled if it is impossible or impracticable to obtain a signed application and the requirements in paragraph (a) of this section concerning cancellation with application have been met or if the debt has been discharged in bankruptcy and there is no security. Form RD 1956-1 will state:

(1) The sources of information obtained.

(2) That a current effort was made to obtain the debtor's application and the date of such effort.

(3) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

§1956.71 Settling uncollectible recapture receivables.

The settlement of uncollectible recapture receivables will be fully documented on Form RD 1956-1 and the form retained in the case file. A memorandum will be sent to the Finance Office: Accounts Settlement Unit (it is not necessary to send a copy of Form RD 1956-1) to remove the receivable stating the type of debt settlement action taken.

§§1956.72 - 1956.74 [Reserved]

§ 1956.75 Chargeoff.

(a) Judgment debts. Subject to the provisions of § 1956.57(g)(3), judgment debts may be charged off by use of Form RD 1956-1 or Form RD 1956-2 for housing upon a report and favorable recommendation of the employee in charge of the account provided:

(1) The United States Attorney's file is closed, and

(2) The requirements of § 1956.70(b)(2) have been met, or two years have elapsed since any collections were made on the judgment and the debtor(s) has no equity in property on which the judgment is a lien or on which it can presently be made a lien.

(b) Nonjudgment debts. Debts which cannot be settled under other sections of this subpart may be charged off using Form RD 1956-1 or Form RD 1956-2 for housing loans without the debtor's signature subject to the following provisions:

(1) When the principal balance is \$2,000 or less and efforts to collect have been unsuccessful or it is apparent that further collection efforts would be ineffectual or uneconomical,

(2) When the OGC advises in writing that the claim is legally without merit,

(3) Even though the Agency considers the claim to be valid, when efforts to induce voluntary payments are unsuccessful and OGC advises in writing that evidence necessary to prove the claim in court cannot be produced, or

(4) When the employee in charge of the account recommends the chargeoff and has made the following determinations on the basis of information in the Agency's official files or from other informed reliable sources:

(i) That the debtor is:

(A) Unable to pay any part of the debt and has no apparent future debt repayment ability as specified in § 1956.66(a); or

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(B) Able to pay part or all of the debt but is unwilling to do so, it is clear that the Government cannot enforce collection of a significant amount from assets or income, and an opinion is received from OGC to that effect; and

(ii) There is no security for the debt.

(c) For debts identified as being part of an unsecured claim under a confirmed Chapter 11 plan, the chargeoff will be documented with a copy of the organization plan, a copy of the court order confirming the plan, and an opinion by OGC that the order confirming the plan discharged the debtor of liability on the unsecured part of the debt. For FLP debts, refer to RD Instruction § 1956.70(b)(3) of this subpart which state that the unsecured claim shall be canceled. Ordinarily, the FLP unsecured claim will be canceled unless Regional OGC advises that a chargeoff is appropriate. (Revised 04-28-99, PN 304.)

§§ 1956.76 - 1956.83 [Reserved]

§ 1956.84 Approval or rejection.

Debt settlement cases not within the approval authority of the Servicing Official will be submitted for review in accordance with Exhibit A of this subpart (available in any servicing office).

(a) Approval authority. Subject to applicable provisions of this subpart, approval and rejection authority for compromise, adjustment, cancellation, or chargeoff of debts is as follows: (Revised 04-28-99, PN 304.)

(1) FLP debts.

(i) The State Executive Director (SED) may approve or reject proposed debt settlements when the outstanding balance of the indebtedness involved in the settlement less the amount of any compromise or adjustment offer is less than \$1 million (including principal, interest, and other charges).

(ii) The Administrator or designee must approve or reject settlement when the outstanding balance of the indebtedness involved in the settlement less the amount of any compromise or adjustment offer is \$1 million or more (including principal, interest, and other charges).

(iii) While under its jurisdiction, the U.S. Attorney's Office or the Civil Division of the Department of Justice (DOJ) will often negotiate settlement of an account. When settlement of an account has been negotiated and approved by DOJ, SEDs may process a debt settlement in accordance with this subpart without application, regardless of the size of the debt. The case files must be documented to reflect the DOJ decision. A copy of the DOJ approval will be attached to Form RD 1956-1.

(iv) Changing a chargeoff of an account to a cancellation, compromise or adjustment of the same account is not additional debt forgiveness. SEDs are authorized to approve cancellation, compromise or adjustment of debts previously charged off by SED, provided the account is not under the jurisdiction of the Department of Treasury or DOJ. Chargeoffs approved by the National Office must be referred to the National Office for cancellation. A deficiency judgment charged off in accordance with § 1956.75(a) of this subpart shall not be cancelled without authorization of the U.S. Attorney's Office.

(v) SEDs shall approve the cancellation of debts discharged in bankruptcy in accordance with § 1956.70(b)(3) of this subpart, regardless of the amount of the outstanding indebtedness.

(vi) SEDs shall not redelegate the authorities described in paragraphs (a)(1)(i) through (a)(1)(v) of this section.

(2) MFH debts. The servicing official may approve or reject compromise, adjustment, cancellation or charge off of MFH debts regardless of amount.

(b) Processing and approval. The approval official will:

(1) Execute completed Form RD 1956-1 or Form RD 1956-2, whichever is applicable. Process the Forms RD 1956-1 and RD 1956-2 in accordance with the applicable Forms Manual Insert. If a "Compromise," "Adjustment," or "Bankruptcy" is involved, the Finance Office must process the form.

(2) Notify debtors in writing of approval of the settlement of their indebtedness and the approximate amount that will be reported to the Internal Revenue Service (IRS) as per § 1956.86 of this subpart. However, adjustment offers will not be reported until after the final payment is applied. This notification will apply to the following cases:

(i) All compromise and adjustment offers. The following will also be done:

(A) The specific amount and terms of the offer will be stated, and

(B) The accounts settled will be identified by reference to the accounts shown on Form RD 1956-1.

(ii) Cancellation with or without application. When a debt is canceled without application, a letter will be sent to the debtor's last known address advising of the debt cancellation.

(3) Not be required to notify debtors of approval of the settlement of their indebtedness when debts are charged off under § 1956.75 of this subpart or canceled under § 1956.70(b) of this subpart.

(4) After approval of debt settlement, except charge offs, any requests for offsets against the borrower must be canceled.

(Revised 04-28-99, PN 304).

(c) Requesting additional information. If rejection appears to be necessary because of lack of information or because the amount of a compromise or adjustment offer is inadequate, the servicing official for SFH debts or the SED for all other debts, may request the employee in charge of the account to obtain the additional information or make an effort to obtain an acceptable offer, as appropriate under the circumstances. Notice of rejection of an offer will be withheld in such cases until sufficient time has elapsed to enable the debtor to present further information or a new offer. All settlement offers will be handled promptly.

(d) Rejection processing. The servicing official for SFH debts or SED for MFH and FLP debts will:

(1) Insert the reasons for rejection on the Form RD 1956-1.

(2) Execute and retain the original form in the State Office.

(3) Return case files and copies of the form to the employee in charge of the account.

(4) Request the Finance Office to return any adjustment or compromise payment held by the Finance Office to the borrower, in care of the employee in charge of the account.

(5) Return any adjustment or compromise payment held by the State Office to the borrower, in care of the employee in charge of the account.

(6) Notify the debtor in writing of the reasons for the rejection in the following cases:

(i) All compromise and adjustment offers.

(ii) Cancellations under § 1956.70(a) of this subpart.

(e) Appeal rights. A debtor whose debt settlement offer is rejected will be notified of appeal rights pursuant to RD Instruction 1900-B. In cases where the adverse decision maker is the County Committee, the servicing official will advise the debtor of appeal rights. If the debtor exercises his or her right to a meeting, the County Committee must meet with the debtor. If the meeting does not result in a resolution, the debtor may exercise his or her right to a hearing. If the hearing officer reverses the adverse County Committee decision, the case will be forwarded to the appropriate debt settlement approval official for consideration of approval.

(f) Unauthorized approval of FLP debt settlements. Authority to approve FLP debt settlements is established in accordance with paragraph (a)(1) of this section. For accounts that have received prior debt forgiveness, settlement authority has been outlined in accordance with Exhibit B of this subpart. If unauthorized approval of a debt settlement is identified, the settlement application with supporting documentation should be forwarded to the correct approval official for post approval. If the debt settlement cannot be post-approved, the correct approval official will provide additional guidance on servicing the account. (Added 04-28-99, PN 304.)

§ 1956.85 Payments and receipts.

(a) Servicing office handling.

§1956.85 (a) (Con.)

(1) An application with which the debtor offers a lump-sum payment in compromise, or with which the debtor offers an initial payment on an adjustment offer, will be accompanied by the payments required at the time such application is filed in the servicing office.

(2) Except as provided in paragraph (a)(3) of this section, payments offered by debtors in settlement of debts will be deposited and transmitted as required in Subpart B, C, and K of Part 1951 of this chapter.

(3) Checks or check transmittal letter containing restrictive notations such as "Settlement in full" or "Payment in full," or in those exceptional instances when the debtor refuses to sign the Form RD 1956-1 in connection with a compromise offer, will be forwarded to the State Office where they will be retained until approval or rejection of the offer. The use of restrictive notations will be discouraged to the fullest extent possible.

(b) Finance Office handling.

(1) All payments evidenced by Form RD 451-2, "Schedule of Remittances," or Form RD 1944-9, "Multiple Family Housing Payment Transmittal," bearing the legend "Compromise Offer - FmHA" or "Adjustment Offer - FmHA," will be held in the Deposits Fund Account by the Finance Office until notification is received from the State Office of the approval or rejection of the offer. In cases of approved offers, remittances will be applied in accordance with established policies, beginning with the oldest loan included in the settlement, except that when the request for settlement includes loans made from different revolving funds the Finance Office will prorate the amount received, on the basis of the total principal balance due the respective revolving funds. Upon notification of a rejection of a debtor's offer and receipt of a request from the State Director for a refund, the Finance Office will refund to the debtor, in care of the employee in charge of the account, the amount held in the Deposits Fund Account representing a rejected compromise or adjustment offer.

(2) When a debtor's adjustment offer is approved, the accounts involved will not be adjusted in the records of the Finance Office until all payments have been made. Form RD 1956-1 will be held in a suspense file pending payment of the full amount of the approved offer. The original Form RD 1956-1 in approved cases will be retained in the Finance Office.

§1956.86 Reporting to the Internal Revenue Service (IRS).
(Revised 05-31-95, PN 246.)

Pursuant to a requirement of the Internal Revenue Service (IRS), RHCDS, RBCDS, RUS, and CFSA will report to the IRS debts which have been determined to be uncollectible. After reporting the debt to IRS, no further efforts to collect the debt will be made. The Finance Office will report to the IRS on IRS Form 1099-C, "Cancellation of Debt," any debt settled through cancellation, compromise, or adjustment.

§§1956.87 - 1956.95 [Reserved]

§1956.96 Delinquent adjustment agreements.

The employee in charge of the account should notify debtors in advance of the due dates of payments on debt settlement agreements. The employee in charge of the account should also promptly contact debtors who are delinquent on debt settlement payments and find out their reasons for not making payments when due, and their plans for completing their agreements. Except for SFH, delinquencies of 30 days or more will be reported to the State Director along with other pertinent information and the recommendation of the employee in charge of the account regarding the further handling of the case. In instances in which the debtor is delinquent under the terms of the debt settlement and is likely to be financially unable to meet the terms of the debt settlement agreement, the County Supervisor for SFH and State Director for all other debts may cancel the existing agreement and process a different type of settlement more consistent with the debtor's repayment ability, provided the facts in the case justify such action. This settlement will be processed in accordance with the procedure for the new agreement. The County Supervisor for SFH and State Director for all other debts, may extend for 90 days, the time for making the payments when the circumstances of the case justify an extension. Extensions for a greater period of time may be made by the State Director upon recommendation of the County Committee (for FP loans) and the employee in charge of the account. A decision not to extend the time for making payments is not appealable. When an adjustment agreement is canceled, the County Supervisor for SFH and State Director for all other debts will notify the debtor giving the reasons in writing, with a copy to the Finance Office and to the employee in charge of the account, when appropriate. Upon receipt, the Finance Office will return the original Form RD 1956-1 to the State Office. The cancellation of an adjustment offer is appealable. If an agreement is canceled, any payments received shall be retained as payments on the debt owed at the time of the adjustment offer.

§1956.97 Disposition of promissory notes.

(a) Notes evidencing debts settled by completed adjustments, completed compromise with or without signature, or canceled with signature will be returned to the debtor or to the debtor's legal representative. The original and copies of the notes will be stamped "Satisfied by Approved Compromise," "Satisfied by Approved Cancellation," or "Satisfied by Completed Adjustment Offer." In such cases, the security instrument(s) will be released of record according to State law.

(b) Notes evidencing debts canceled without application will be placed in the debtor's case folder and disposed of pursuant to RD Instruction 2033-A. However, if the debtor requests the notes, they may be stamped "Satisfied By Approved Cancellation" and returned.

(c) Notes evidencing charged off debts will be retained in the servicing office and will not be stamped or returned to the debtor. They will be destroyed 6 years after charged off pursuant to RD Instruction 2033-A. (Revised 04-09-97, PN 275.)

(d) In case of a transfer of security with assumption for less than the debt, the promissory note will be attached to the assumption agreement covered by the note and kept in the transferee's file.

§1956.98 [Reserved]

§1956.99 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the appropriate program Assistant Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse affect on the Government's interest, propose alternative courses of action, and show how the adverse affect will be eliminated or minimized if the exception is granted. Any settlement actions approved by the Administrator under this section will be documented on Form RD 1956-1 and returned to the State Office for submission to the Finance Office.

§1956.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0118.

Public reporting burden for this collection of information is estimated to vary from 15 to 20 minutes per response, with an average of 20 minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Attachment: Exhibit A (available in any Rural Development/FSA office)

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Settlement of Farm Loan Programs Debts

I. General.

This exhibit contains the procedures for review of debt settlement and release of liability cases.

Applications for debt settlement and release of liability will be approved (or recommended to the National Office or Department of Justice (DOJ)) or rejected by the State Executive Director (SED) within 90 days of receipt of a complete application signed by all liable parties. The District Director will forward the information required under item II to the State Office within 60 days of a complete application. A complete application shall consist of Form RD 1956-1, "Application for Settlement of Indebtedness," and the supporting documentation required to complete questions 12B through 12H of Form FSA 1956-10, "Debt Settlement and Release of Liability Checklist."

II. Information to be submitted through District Director.

Cases submitted by the local servicing office will be accompanied by:

- A. Transmittal memorandum with the local servicing official's recommendation,
- B. Form RD 1956-1,
- C. Servicing office files,
- D. Documentation required to complete Form FSA 1956-10, and
- E. For release of liability cases - Form RD 1965-8, "Release From Personal Liability," with County Committee recommendation on FSA 440-2, "County Committee Certification or Recommendation."

The District Director will review the case file and complete Form FSA 1956-10, then forward the above documentation to the State Office. The only exception to this requirement is when the actual debt settlement or release of liability was negotiated and approved by the DOJ.

III. State Office Review.

A. All debt settlement and release of liability cases will be reviewed thoroughly by a State Office Farm Loan Program official using Form FSA 1956-10.

B. The State Settlement Review Committee (SSRC) will review all debt settlement and release of liability cases before approval by the SED or recommendation to the appropriate approval official (such as the Administrator or DOJ).

The SSRC will consist of at least three members including the SED, the Farm Loan Program Chief, and a member of the State Farm Loan Program staff. The recommendation of the SSRC will be noted on Form FSA 1956-10.

IV. Debt Settlement and Release of Liability Requiring Administrator's Approval.

When debt settlement or release of liability is recommended for accounts requiring Administrator's approval, the debt settlement or release of liability application package will consist of the following:

- A. A memorandum from SED recommending approval,
- B. Form RD 1956-1,
- C. When applicable, a legal opinion from the Regional Attorney addressing the statute of limitations,
- D. Form FSA 1956-10 signed by the SSRC,
- E. Case file which includes documentation supporting Form FSA 1956-10,
- F. For release of liability cases - Form RD 1965-8 with County Committee recommendation on Form FSA 440-2, and
- G. Additional information as may be required by the National Office.

If the SED is unable to recommend debt settlement or release of liability, the SED should reject the application and provide the borrower with informal review and appeal rights.

APPROVING DEBT SETTLEMENTS FOR BORROWERS WHO HAVE RECEIVED PREVIOUS DEBT
FORGIVENESS

Processing debt settlements (including release of liability) of accounts that have received prior debt forgiveness. Based on the Federal Agriculture Improvement and Reform Act of 1996, borrowers are only entitled to one debt forgiveness under the Consolidated Farm and Rural Development Act (CONACT) direct loan program. There are no exceptions.

However, even though a previous debt forgiveness has been received, debt settlements can be processed outside CONACT authorities. **Such approval is based on the Debt Collection Act of 1982 at 31 U.S.C. Chapter 37, and not the CONACT.**

State Executive Directors (SEDs) are authorized to approve:

(a) Settlement of debt when the claim, exclusive of interest, penalties and administrative costs, is less than \$100,000. Follow RD Instruction 1956-B for guidance in accepting and processing debt settlement requests. A copy of this Exhibit will be attached to Form RD 1956-1, "Application for Settlement of Indebtedness."

(b) Cancellation of debts discharged under Chapters 7, 11, 12, or 13 of the bankruptcy code, regardless of the amount of the debt. The cancellation will be processed in accordance with § 1962.47(f) of RD Instruction 1962-A.

Note: All liable parties must have received a bankruptcy discharge before SED uses this authority.

(c) Settlements **negotiated and approved** by the U.S. Department of Justice (DOJ). A copy of the DOJ approval will be attached to Form RD 1956-1.

(d) Settlement of debt regardless of amount, when the local Office of the General Counsel (OGC) determines that the 6-year statute of limitations for deficiency judgment and the 10-year statute for settlement have expired or that the debt is otherwise legally without merit. A copy of the OGC opinion and this Exhibit will be attached to Form RD 1956-1.

If recommended by SED, settlement of accounts which do not meet the above requirements, must be referred to the Civil Division of DOJ, through the local OGC. In addition to information collected under RD Instruction 1956-B, a Claims Collection Litigation Report will be completed and forwarded to the Regional Attorney (OGC). To refer the account to DOJ, OGC must concur that the debt settlement should be accepted with citation to the relevant Federal Claims Collection Act standards, if appropriate.

When considering the settlement, DOJ will focus on the ability and prospects of the debtor to repay the debt over a reasonable period. The continuing ability of the debtor to farm and the degree of the debtor's cooperation with FSA will be accorded little significance.

Settlements referred to DOJ which are rejected by DOJ will be denied by the SED for the reasons stated by DOJ.

Borrowers will not be provided appeal rights for settlements rejected under this authority. However, rights to a National Appeals Division review of the Agency's "appealability" decision will be provided.